IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.1.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

W.P.No.19847 of 2001
& W.M.P.No.29255 of 2001

1. Union of India rep. by
Postmaster-General,
Tamilnadu Circle,
Chennai-600 002.

2. Sr. Supdt. of RMS,
Railway Mail Service,
'T' Division, Tiruchy-620 001.

3. The Head Record Officer,
Railway Mail Service,
'T' Division, Tiruchy-620 001. .. Petitioners

vs.

1. G.Sivaramakrishnan
2. The Registrar,
Central Administrative Tribunal,
Chennai Bench-600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, calling for the records of the second respondent, dated 27.4.2000 in O.A.No.554 of 1998 and quash the order.

For petitioners : Mr.E.R.K.Moorrthy, CGSSC.

For respondent-1 : Mr.L.Chandrakumar
R2 Tribunal

ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J.)

The Union of India represented by the Postmaster General, Tamil Nadu Circle, Chennai-600 002, The Senior Superintendent of Railway Mail Service, 'T' Division, Tiruchy-620 001 and the Head Record Officer, Railway Mail Service, 'T' Division, Tiruchy-620 001, are the petitioners.

2. The challenge in the Writ Petition is to the order of the Central Administrative Tribunal, dated 27.4.2000 passed in O.A.No.554 of 1998, in and by which the Tribunal, while setting aside the order of removal from service in respect of the first respondent, dated 22.1.1997 as well as the rejection of his appeal petition, by order dated 24.2.1998, directed the petitioners herein to restore the first respondent herein to

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duty within one month from the date of receipt of a copy of the order and also held that the first respondent was not entitled for any monetary benefits for the period from the date of removal till the date of reinstatement.

3. The brief facts which led to the passing of the above order of the Tribunal, can be stated as under:

The first respondent who joined as a Mail Mazdoor in the Railway Mail Service in the year 1982, was posted as an Extra-Departmental Mail Man. On 8.7.1994, when the first respondent was on duty at 7.30 hours, affixing the date stamp impressions on the advance work papers for 10.7.1994, it was noticed by his higher authority, one Thiru.S.Hirudayaraj, C.M.A. that the first respondent was in an intoxicated mood. The said Hirudhayaraj was stated to have advised the first respondent to report to the H.R.O. on the next day by cancelling his duty. It is stated that after some altercation, he left the scene and returned back at 22.30 hours in an intemperate mood and argued with some vehemence with the C.M.A. on duty. At that point of time, one Thiru.P.Muthukumar, the officiating I.R.M., who was present at the scene, advised the first respondent to contact the H.R.O. on the next day turning down his request. In the course of the said altercation, the first respondent was stated to have suddenly attacked the said I.R.M. with an 'aruval' at 22.45 hours, causing him bleeding and cut injuries. When the first respondent was about to attack the I.R.M. for the second time, Thiru.Hirudayaraj, C.M.A. appeared to have prevented the first respondent and in that process, the first respondent was stated to have caused bleeding injuries on both his palms.

4. On the above stated incident, a criminal complaint was stated to have been made, wherein the first respondent was proceeded against in the Criminal Court for the offences falling under Sections 332, 333 and 307 IPC. In the Criminal Court, the first respondent was acquitted by order dated 4.7.1996.

5. There were also departmental proceedings initiated against the first respondent, in which Thiru.P.Muthukumar, the officiating I.R.M. and Thiru.Hirudayaraj, C.M.A. were examined as witnesses. The first respondent fully participated in the enquiry and the enquiry officer submitted his report, dated 10.7.1996, holding that the charges levelled against the first respondent were conclusively proved. Based on the findings of the enquiry officer, by order dated 22.1.1997, the first respondent was removed from service. The first respondent preferred an appeal petition dated 8.4.1997, which was subsequently dismissed by order dated 24.2.1998.

6. As against the above said orders dated 22.1.1997 and 24.2.1998, the first respondent preferred O.A.No.554 of 1998 and the Tribunal, by the impugned order, held that when once the first respondent has been acquitted by the Criminal Court on merits, the petitioners should not have proceeded against and pass the order of removal from service. It was on that basis, the Tribunal while setting aside orders impugned before it, directed the petitioners herein to restore the first respondent herein to duty and the Tribunal however held that the first respondent was not entitled for any monetary benefits for the period from the date of removal till the date of reinstatement.

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7. Assailing the order of the Tribunal, Mr.E.R.K.Moorrthy, learned Standing Counsel for the Central Government appearing for the petitioners, contended that since the Supreme Court has taken a consistent view that criminal proceedings and departmental action travel on two different planes and the acquittal by the Criminal Court need not always deter the department from proceeding against the delinquent and pass appropriate order of punishment, the Tribunal was not justified in interfering with the order of removal passed against the first respondent, especially when the charge against the first respondent was serious, in that, he caused bleedings and cut injuries to his co-employee. The learned Standing Counsel also relied upon the decisions of the Supreme Court reported in 2006 (2) SCC 584 (South Bengal State Transport Corporation vs. Sapan Kumar Mitra) and 2004 (6) SCC 482 (Allahabad District Cooperative Bank Ltd., Allahabad vs. Vidhya Varidh Mishra) and a decision of a Division Bench of this Court reported in 2005 (1) CTC 625 (The Management of Thiruvalluvar Transport Corporation vs. S.Anthonysamy ) in support of his submissions.

8. As against the above submissions, Mr.L.Chandrakumar, learned counsel appearing for the first respondent, by relying upon a decision of the Supreme Court reported in 2006 (5) SCC 446 (G.M.Tank vs. State of Gujarat), contended that when once an employee has been honourably acquitted in a Criminal trial, the order of removal from service cannot be sustained. The learned counsel for the first respondent also contended that the Tribunal, having only directed reinstatement without any monetary benefits for the period of non-employment, the same does not call for any interference.

9. Having heard the learned counsel for the respective parties, we are of the view that in the light of the consistent view of the Supreme Court on the question as to the authority or power of the Department to proceed against an employee in respect of a misconduct which was based on the same set of facts with reference to which the criminal proceedings were also initiated, which ultimately ended in acquittal, the Department is entitled to make an assessment of the evidence differently in the departmental proceedings for the purpose of passing final order of punishment, it will have to be held that the impugned order of the Tribunal cannot be sustained.

10. On the above issue, we wish to be guided by a recent decision of the Supreme Court reported in 2006 (2) SCC 584 (supra) and in paragraphs 9 and 10 of the said judgment, the Supreme Court has succinctly stated the legal position as under:

> "9. We have heard the learned counsel for the parties and also examined the relevant records of this case. Although the Division Bench had not categorically said that the departmental proceeding could not be continued and punishment could not be imposed on the delinquent employee when the criminal case ended in acquittal, even then the learned counsel for the respondents sought to argue this ground before us. In our view, this ground is no longer res integra. In Nelson Motis v. Union of India (1992 (4) SCC 711 : 1993 SCC (L & S) 13 : 1993 (23) ATC 382) a three-Judge Bench of this Court observed at SCC p.714, para 5, as follows:

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"5. So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject-matter of the criminal case."
(emphasis supplied)

10. Similarly, in Senior Supdt. of Post Offices v. A.Gopalan (1997 (11) SCC 239 : 1998 SCC (L & S) 124) the view expressed in Nelson Motis v. Union of India (1992 (4) SCC 711 : 1993 SCC (L & S) 13 : 1993 (23) ATC 382) was fully endorsed by this Court and similarly it was held that the nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and the order of acquittal in the former cannot conclude the departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued. That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed."

11. In the earlier decision of the Supreme Court reported in 2004 (6) SCC 482 (supra), the Supreme Court has stated the above legal position in an emphatic manner in paragraph 12, which is to the following effect:

"12. Mr.Rao submitted that the respondent had been exonerated by the criminal court. He submitted that the termination was only on the basis of his conviction. He submitted that as his conviction is set aside, the courts below were right in reinstating the respondent. We are unable to accede to this

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submission. The termination was pursuant to a disciplinary inquiry. It is settled law that in a disciplinary inquiry a conclusion different from that arrived at by a criminal court, may be arrived at. The strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceeding. The respondent had not claimed that the disciplinary proceedings were not concluded fairly. As the termination was based on findings of the Disciplinary Committee, the fact that the appellate court exonerated the respondent was of no consequence."

This decision of the Supreme Court has also been applied by the First Bench of this Court in the decision reported in 2005 (1) CTC 625 (supra).

12. On a fair reading of the above referred to decisions of the Supreme Court as well as the Division Bench of this Court, the position is crystal clear that while in the Criminal Court, the charge has to be proved by proof beyond reasonable doubt, the same is not the case in the Departmental proceedings, where the standard of proof for proving the charge is mere preponderance of probabilities.

13. The Supreme Court having stated that the said position of law is well settled by a catena of decisions of the Supreme Court, as held in the decision reported in 2006 (2) SCC 584 (supra), it will be travesty of justice if in respect of the case where the first respondent was stated to have caused bleeding and cut injuries on his co-employee in the course of his employment in the Railway Mail Service, which conduct of the first respondent was duly explained by the concerned person who suffered such bleeding injuries, before the Departmental enquiry officer, it will be wholly improper and inexpedient to ignore the said findings of the enquiry officer and the ultimate order of removal from service passed by the petitioners and direct reinstatement by simply stating that the first respondent was acquitted by the Criminal Court on the very same set of facts. Therefore, being guided by the decisions of the Supreme Court, we are unable to sustain the order of the Tribunal in directing reinstatement of the first respondent.

14. As far as the other decision of the Supreme Court reported in 2006 (5) SCC 446 (supra) is concerned, it is true that the Supreme Court has held that if an employee is honourably acquitted by the Criminal Court even during the pendency of the proceedings challenging the dismissal, the dismissal order cannot be sustained. But on a careful consideration of this decision of the Supreme Court, we find that the Supreme Court has made a thorough examination of the pleadings, evidence and the charge involved in that case and on a detailed reference to the evidence available on record, the Supreme Court has found that the Criminal Court's conclusion was based on thorough examination of the facts involved and in view of the said overwhelming evidence that was placed before the Criminal Court with regard to the offence charged under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, which was found to be not proved, the Supreme Court took the view that in spite of the acquittal which was out and out on merits, in the absence of any evidence to prove the charge, the order of dismissal from service cannot be sustained after acquittal. We find no comparison of the facts involved therein to the

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case on hand where the first respondent was charged with the serious offence of misconduct of causing bleeding injuries on a co-employee in the course of his employment with the petitioners. Therefore, the said decision being clearly distinguishable, cannot be applied to the facts of this case.

15. Therefore, we find no scope to sustain the order of the Tribunal impugned in this Writ Petition. The impugned order of the Tribunal is set aside. The order of removal from service, dated 22.1.1997 and the rejection order by the appellate authority dated 24.2.1998, are restored. The Writ Petition stands allowed. No costs. W.M.P. is closed.

cs

Sd/-

Asst.Registrar

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Sub Asst.Registrar

To

1. The Post master-General,
   Union of India,Tamilnadu Circle,
   Chennai-600 002.

2. The Sr. Supdt. of RMS,
   Railway Mail Service,
   'T' Division, Tiruchy-620 001.

3. The Head Record Officer,
   Railway Mail Service,
   'T' Division, Tiruchy-620 001.

4. The Registrar,
   Central Administrative Tribunal,
   Chennai Bench-600 104.

+1 cc to Mr.E.R.K.Moorthy, Advocate Sr.No.2721.

+1 cc to Mr.L.Chandrakumar,Advocate Sr.No.2528.

NKT(CO)
dcp/30.1.07.



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